IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WA.No. 1123 of 2007()

{IN W.P.(C)NO.12567/2007 OF THIS COURT}
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APPELLANTS/PETITIONERS:
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1. SATISH MURTI, AGED 44 YEARS,
   SON OF K.V.NARAYANMURTI, FLAT NO.102,
   KALATMAK RESIDENCY, VIDYA NAGAR, KOCHI-20.

2. N.GOVINDAN, AGED 62 YEARS,
   SON OF KRISHNANKUTTY NAIR,
   FLAT NO.103, KALATMAK RESIDENCY,
   VIDYA NAGAR, KOCHI-20.

3. BABU NARAYANAN, AGED 44 YEARS,
   SON OF KRISHNANKUTTY NAIR,
   FLAT NO.201, KALATMAK RESIDENCY,
   VIDYA NAGAR, KOCHI-20.

BY ADV. SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

RESPONDENTS/RESPONDENTS:
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1. EMPIRE BUILDERS, 4TH FLOOR,
   LALAN TOWERS, BANERJEE ROAD, COCHIN-31,
   REPRESENTED BY ITS GENERAL MANAGER,
   MR.ANAND KUMAR.

2. THE SECRETARY, CORPORATION OF KOCHI,
   CORPORATION OFFICE, PARK AVENUE, PB NO.1016,
   KOCHI-11.

3. THE SECRETARY, MINISTRY OF LOCAL
   ADMINISTRATION, SECRETARIAT,
   THIRUVANANTHAPURAM.

4. THE KERALA STATE POLLUTION CONTROL BOARD
   ERNAKULAM.

5. THE COMMISSIONER OF POLICE, ERNAKULAM.

R3 & R5 BY SENIOR GOVERNMENT PLEADER SMT.MEERA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

W.A. No.1123 of 2007

Dated this, the 25th day of May, 2007.

JUDGMENT

H.L. DATTU, C.J.

This appeal is filed against an interim order passed in W.P.(C) No.12567 of 2007 dated 13.4.2007. The interim order reads as under:

> "Interim order dt.11.4.07 is modified permitting the first respondent to complete construction upto the permissible limits under the Building Rules, subject to result of Writ Petition."

2. The appellants in this appeal, are the petitioners in W.P.(C) No.12567 of 2007. In the writ petition, the petitioners had alleged that the first respondent is putting up construction in violation of the building bye-laws. This court, while entertaining the writ petition, had granted an interim order restraining the first respondent from proceeding with the construction.

3. After service of notice, they had entered appearance through their learned counsel. On an oral request made by the learned counsel appearing for the respondents, the learned single Judge has modified the interim order permitting the first respondent to complete construction upto the permissible limits under the Building Rules and further stated that the said construction shall be subject to result of Writ Petition.

4. Learned counsel appearing for the appellants would contend that the learned single Judge, having initially noticed that the first respondent is putting up construction of a building in violation of the building bye-laws and having granted an interim order as prayed for by the petitioners, could not have modified the interim order by permitting the first respondent to complete construction of the building.

5. Having carefully considered the submission made by the learned counsel for the appellants/petitioners, we are of the opinion that the

said submission has no merit whatsoever. It is the allegation of the petitioners that the first respondent is putting up construction in violation of the building bye-laws. It is true that accepting the contention of the petitioners that the learned single Judge had granted the interim order restraining the first respondent from putting up constructions. That does not mean to say that once an interim order is passed, it cannot be modified or vacated. On a request made by the first respondent, the learned single Judge has thought it fit to modify the interim order and thereby permitted the first respondent to complete the construction upto the permissible limits under the Building Rules, subject to the result of the writ petition. If for any reason the petitioners succeed, they can definitely request the court to pass consequential orders.

In view of the above, in our opinion, the appeal filed by the petitioners against the interim order passed by the learned single Judge need not be entertained by

this court. Accordingly, the appeal deserves to be rejected and it is rejected.

Sd/-
H.L. DATTU,
CHIEF JUSTICE.

Sd/-
K.T. SANKARAN,
JUDGE.

sk/DK.

//true copy//

P.S. To Judge